STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-161

May 21, 2002

PUBLIC UTILITIES COMMISSION
Interim Electric Energy Conservation Programs

ADVISORS' RECOMMENDATION ON INTERIM FUNDING

NOTE: This Report contains the recommendations of the Hearing Examiner and is in draft order format. Parties may file responses or exceptions to this Report on or before **June 3, 2002**. It is expected that the Commission will consider this Report at its deliberative session on **June 10, 2002**.

I. SUMMARY

By this [proposed] Order, the [Advisors recommend] that the Commission assess transmission and distribution utilities for the full amount of money collected from ratepayers, since March 1, 2000, that was expected to be spent on conservation programs, but has not been spent on such programs. On a going forward basis, until the "permanent" program plan, including funding level, is established in Docket No. 2002-162, [the advisors recommend that] the Commission will assess T&D utilities for the amount of conservation expenses included in each T&D utility's rates, less any amounts spent on "prior conservation efforts" as defined in 35-A M.R.S.A. § 3211-A(1).

II. BACKGROUND

By Proposed Order on April 26, 2002, the Commission established a process to decide whether to implement any interim conservation programs pursuant to subsection 7 of P.L. 2001, ch. 624 (the Conservation Act). In that

Order, we stated that we read subsection 7 to constitute a legislative preference to implement conservation programs before the Commission completed the tasks required for "permanent" programs that are stated within subsections 2 and 3 of the Act. We remain on schedule to implement interim programs during June through August, 2002. In order to implement interim programs we must have money in the conservation program fund (established pursuant to subsection 5). Therefore, initial funding decisions must be made now, and cannot be delayed until the "permanent" program decisions are made in Docket No. 2002-162.

On March 1, 2000, when electric restructuring was implemented and transmission and distribution (T&D) utilities were created, conservation programs were governed by now-repealed 35-A M.R.S.A. § 3211. We promulgated the current version of Chapter 380 to implement the policy established by section 3211. By section 3211 and Chapter 380, T&D utilities were required to implement conservation programs consistent with a plan developed by the State Planning Office (SPO). The costs of the conservation programs were to be recovered in rates from customers of the T&D utilities. The State Planning Office had not completed its program plan by March 1, 2000, when the initial rates for the newly-created T&D utilities had to be established. In the various T&D ratemaking proceedings, the Commission adopted a policy in regard to conservation spending by which rates were to be set using the best estimate for prospective conservation program spending, with the understanding that the actual conservation spending would be reconciled with the estimate used to set rates.

For MPS and BHE, which had minimal conservation spending in the years immediately prior to restructuring, we set rates assuming conservation spending at the statutory floor, 0.5% of the total T&D revenue. For CMP, which had been spending on conservation programs close to the statutory maximum, 1.5 mils per kWh, rates were set assuming CMP spent at the statutory maximum. The level of collection for conservation was not explicitly stated in most COUs' rate proceedings.

For various reasons, although a State Planning Office program plan was developed, it was never implemented. Accordingly, BHE and MPS have a significant overcollection of conservation funds since March 1, 2000. Although CMP expected to spend on its "prior conservation programs" at the amount reflected in rates, actual spending has been less. For the period March 1, 2000 through December 31, 2001, CMP realized an approximate overcollection of $2,257,000, including carrying costs, for its Power Partner Program, and an approximate overcollection of $67,000, including carrying costs, for all other conservation programs.

In Docket No. 2002-124, its annual price change filing made as part of the ARP 2000 rate plan, CMP proposed to return the overcollection associated with its Power Partner Program to customers.[1] CMP did not propose to return to customers the overcollection associated with its other conservation programs. In

[1]The estimated overcollection would result in a 0.98% decrease in distribution rates.

Docket No. 2002-124, the Examiner suggested the issue of the proper treatment of the Power Partner overcollection not be decided in the ARP annual review proceeding. Instead, he suggested the overcollection should be dealt with in one or more of the Conservation Act proceedings. CMP, and the other parties, accepted the Examiner's suggestion.

III. DECISION

In conjunction with the interim program decisions, we must decide two funding questions. Prior to the Conservation Act, the T&D utilities collected significantly greater conservation-related revenue than they spent on conservation programs. We must decide whether those pre-Conservation Act funds should be transferred to the Commission's conservation program fund or continue to be deferred by the T&D utilities for later return to ratepayers. In addition, we must decide the amount to assess the T&D utilities during this interim program period, on an ongoing basis either to fund interim programs or to fund future programs implemented as part of the Commission's "permanent" conservation program plan, until final funding decisions are made in the "permanent" conservation proceeding.

A. Funds Collected Before the Conservation Act

The Conservation Act authorizes the Commission to assess T&D utilities for money to pay for conservation programs and Commission administrative costs. The Act directs the Commission to establish a conservation program fund and a conservation administrative fund as the accounts in which to

deposit the money received from utilities. The language of the Act, however, does not refer to or otherwise mention the money that utilities have collected from ratepayers for conservation programs pursuant to repealed section 3211 but that remain unspent.

Any ambiguity in the Legislature's intent as to the disposition of collected-but-not-spent conservation funds is clarified in the emergency preamble of the Act. The relevant paragraph of the preamble reads:

> Whereas, funds for conservation programs have been allocated pursuant to existing law, and there is an immediate need to put in place changes to the law in order to ensure efficient and effective use of these funds[.]

We do not believe it plausible that the Legislature could intend "efficient and effective use" to mean that such funds should be refunded to customers without any consideration by the Commission whether the money could be used to fund conservation programs that meet the statutory criteria for interim or "permanent" programs. The words "efficient" and "effective" are words used in conjunction with conservation and not rate refunds. We believe that the overcollected funds will be put to "efficient and effective use" only if they are available to the Commission to be spent on conservation programs.

We conclude that the overcollected funds are subject to assessment by the Commission and transfer to the Commission's conservation program fund. We have not yet determined whether there are enough cost effective conservation programs to use up some or all of the previously collected funds. By placing the money in the conservation program fund, we can preserve

both options, spending the money on cost-effective conservation or returning it to ratepayers.[2]

B. Program Funds Collected During Interim Period

As stated earlier, before the Conservation Act was enacted, a conservation program plan was to be developed by the State Planning Office and programs implemented by the T&D utilities. T&D rates were set to include the best estimate of the conservation-related expenses that the T&D utilities would incur carrying out the SPO's plan. Even now that the Conservation Act has repealed SPO's authority and removed the implementation responsibility from the utilities, the T&D utilities continue to collect money from ratepayers designed to pay for conservation expenses.

During 2002, as described in Docket No. 2002-162, the Commission will develop its conservation program plan. As part of that plan, the Commission must decide certain funding issues. Funding issues include whether to fund programs at the floor level (0.5% of T&D revenue) or the cap level (1.5 mils per kWh), or somewhere in between. Our funding decisions:

> must result in total conservation expenditures by each transmission and distribution utility that:
>
> A. Are based on the relevant characteristics of the transmission and distribution utility's service territory, including the needs of customers[.]

[2] We do not find any material difference between assessing utilities before we decide about programs and the utilities holding the funds while we decide about interim and "permanent" programs, and then assessing to collect the overcollections if and when we decide to implement either type of program.

35-A M.R.S.A. § 3211-A(4).

In addition, while we examine the characteristics of each T&D utility, our funding decisions must result in conservation spending that is "proportionally equivalent" to the spending by other T&D utilities, "unless the Commission finds that a different amount is justified[.]" 35-A M.R.S.A. § 3211-A(4)(D). Thus, the Commission must set conservation spending that is proportionally equivalent[3] among all T&D utilities, unless our examination of each T&D service territory causes us to decide that different spending is reasonable. The Legislature has further prohibited us from achieving proportional equivalency by simply raising the assessments of some T&D utilities to the higher level of other T&D assessments for the sole purpose of achieving proportional equivalency. As mentioned above, BHE's and MPS's rates reflect the floor amount of expenses, while CMP's reflect the cap. The Commission cannot achieve proportional equivalency simply by raising BHE and MPS to the cap amount. To raise BHE and MPS to the cap (and thereby achieve proportional equivalency with CMP,) the Commission must find that assessment and spending at the cap is reasonable and proper based upon the relevant characteristics of the MPS and BHE service territories.

As can be seen, the funding decisions that the Commission must make are varied and complex. These decisions will not be made, and programs will not be implemented based upon these funding decisions, until 2003. In the

[3] "Proportionally equivalent" is not defined. The Commission will define the term, for example, by total kWh, total customers, or some other means.

meantime, we must implement interim programs during 2002.[4] As it is not practical, or perhaps even possible, to decide within the next few months that conservation spending or collections from ratepayers should be changed from the current levels in rates, we will not change any T&D rates during the remainder of calendar year 2002.[5] Nor will we create any additional deferrals by increasing assessments to an amount greater than that currently reflected in rates. During the interim period, we will maintain the status quo. Accordingly, our assessments during this interim period will reflect the amounts expected to be collected in T&D rates over the remainder of 2002.

We are authorized to, even encouraged to, implement interim programs. So that we "avoid a significant delay," we are "not required to satisfy the requirements of Title 35-A, section 3211-A before implementing [interim] programs." P.L. 2001, ch. 624, § 7. Thus, the Legislature recognized that, in order to achieve the goal of implementing programs in the interim period, the Commission might be unable to satisfy some or all of the statutory standards expressed in section 3211-A. Current rates reflect a level of conservation collections that have been in place since March, 2000. An assessment that leaves those collection amounts in place for the remainder of 2002 allows us to

[4] It remains possible that our interim program decision will be to decide not to implement any interim programs.

[5] We will assume that Consumer-Owned Utilities whose initial T&D rate cases did not explicitly address conservation expenses have been collecting at the statutory floor.

keep rates stable without creating any new deferrals, while implementing interim programs and taking the time necessary to resolve the funding issues raised in section 3211-A. This reasonable course of action allows us to carry out the legislative directives expressed in the Act.

Accordingly, the Administrative Director will issue assessments to all T&D utilities consistent with this Order. The ongoing assessment shall be issued quarterly, and shall be based on kWhs or revenues from the prior calendar year.

Dated: May 21, 2002

Submitted by,

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James A. Buckley
Presiding Officer

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